

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

June 1, 2010

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RE: Kenneth J. Gibson, Jr., and Kimberly Gibson v. Car Zone, et al
C. A. No.: CPU5-09-002812

Decision on Appellees' Motions to Dismiss

Mr. Morris, Mr. Chowdry and Mr. Curtin:

The Court is in receipt of the Motions to Dismiss filed by Appellees, Defendants-Below, Tri-State Auto Outlet, Inc., d/b/a Car Zone, and Security National Automotive Acceptance Corp. Appellants, Plaintiffs-Below, Kenneth and Kimberly Gibson, are appealing the Justice of the Peace Court's November 10, 2009, denial of their Rule 60(b) motion to reopen the original Order granting a directed verdict to the defendants at trial on May 14, 2007, at the conclusion of the plaintiffs' case in chief.

This case has a long and complicated procedural history, precipitated by the plaintiffs' failure to file a timely appeal of the Justice of the Peace Court's Order granting the directed verdict. Despite the plaintiffs' efforts to have the underlying case reviewed through Rule 60(b), at this time the Court does not have jurisdiction over the issues presented at trial, and will not consider them. *Dixon v. Del. Olds, Inc.*, 405 A.2d 117, 118 (Del. 1979). That is not to say that this Court lacks jurisdiction entirely.

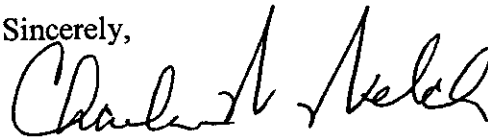
When the Justice of the Peace Court enters an order denying relief from a "judgment," 10 *Del. C.* § 9570 allows this Court to review the law without removing the cause from the Justice of the Peace Court. *Davidson v. Robbins*, 2000 WL 22958583, at *2 (Del. Com. Pl.) (citing *Ney v. Polite*, 399 A.2d 527, 529 (Del. 1979)). Such an order

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ends the litigation on its merits, and, therefore, it meets the appellate test of "finality," and is itself a judgment. *Id.* Since the Justice of the Peace Court's denial of the appellant's motion to reopen is itself a judgment, it is reviewable by this Court on appeal. The appellees' motions to dismiss are therefore denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent part.

Charles W. Welch, III

CWW:mek